
Introduced by Senator Denham

February 17, 2006

An act to amend Section 777 of the Evidence Code and to amend Section 1102.6 of the Penal Code, relating to victims of crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1328, as introduced, Denham. Victims: presence at proceedings.

Existing law provides the victim of a crime the right to be present at all criminal proceedings, except under specified circumstances.

This bill would allow the victim of a crime the right to be present at all criminal proceedings, even if the victim is a testifying witness.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 777 of the Evidence Code is amended
2 to read:
3 777. (a) Subject to subdivisions (b) and (c), *and except as*
4 *provided in Section 1102.6 of the Penal Code*, the court may
5 exclude from the courtroom any witness not at the time under
6 examination so that such witness cannot hear the testimony of
7 other witnesses.
8 (b) A party to the action cannot be excluded under this section.
9 (c) If a person other than a natural person is a party to the
10 action, an officer or employee designated by its attorney is
11 entitled to be present.
12 SEC. 2. Section 1102.6 of the Penal Code is amended to read:
13 1102.6. The right of a victim of crime to be present during
14 any criminal proceeding shall be secured as follows:

1 (a) Notwithstanding any other law, ~~and except as specified in~~
2 ~~subdivision (d)~~, a victim shall be entitled to be present and seated
3 at all criminal proceedings where the defendant, the prosecuting
4 attorney, and the general public are entitled to be present.

5 (b) A victim may be excluded from a criminal proceeding only
6 if each of the following criteria are met:

7 (1) Any movant, including the defendant, who seeks to
8 exclude the victim from any criminal proceeding demonstrates
9 that there is a substantial probability that overriding interests will
10 be prejudiced by the presence of the victim. “Overriding
11 interests” may include, but are not limited to, the following:

12 (A) The defendant’s right to a fair trial.

13 (B) The government’s interest in inhibiting the disclosure of
14 sensitive information.

15 (C) The protection of witnesses from harassment and physical
16 harm.

17 (D) The court’s interest in maintaining order.

18 (E) The protection of sexual offense victims from the trauma
19 and embarrassment of testifying.

20 (F) Safeguarding the physical and psychological well-being of
21 a minor.

22 (G) The preservation of trade secrets.

23 (2) The court considers reasonable alternatives to exclusion of
24 the victim from the criminal proceeding.

25 (3) The exclusion of the victim from any criminal proceeding,
26 or any limitation on his or her presence at any criminal
27 proceeding, is narrowly tailored to serve the overriding interests
28 identified by the movant.

29 (4) Following a hearing at which any victim who is to be
30 excluded from a criminal proceeding is afforded an opportunity
31 to be heard, the court makes specific factual findings that support
32 the exclusion of the victim from, or any limitation on his or her
33 presence at, the criminal proceeding.

34 (c) As used in this section, “victim” means (1) the alleged
35 victim of the offense and one person of his or her choosing or
36 however many more the court may allow under the particular
37 circumstances surrounding the proceeding, (2) in the event that
38 the victim is unable to attend the proceeding, two persons
39 designated by the victim or however many more the court may
40 allow under the particular circumstances surrounding the

1 proceeding, or (3) if the victim is no longer living, two members
2 of the victim's immediate family or however many more the
3 court may allow under the particular circumstances surrounding
4 the proceeding.

5 ~~(d) Nothing in this section shall prevent a court from~~
6 ~~excluding a victim from a criminal proceeding, pursuant to~~
7 ~~Section 777 of the Evidence Code, when the victim is~~
8 ~~subpoenaed as a witness. An order of exclusion shall be~~
9 ~~consistent with the objectives of paragraphs (1) to (4), inclusive,~~
10 ~~of subdivision (b) to allow the victim to be present, whenever~~
11 ~~possible, at all proceedings.~~

12 *Immediate family includes, but is not limited to, spouse,*
13 *domestic partner, parents or step parents, children or step*
14 *children, siblings or step siblings, or any other person deemed to*
15 *have a significant relationship with the victim.*

16 *(d) In cases of a high profile nature where available seating in*
17 *the courtroom is limited, the court shall reserve at least one-third*
18 *of the available seating for the victim, the victim's family and*
19 *support people, the support staff from a victim services agency,*
20 *and staff from the prosecuting agency. Seats not used by the*
21 *listed people can be made available for the public and media.*